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THE UNIVERSITY OF CHICAGO
ABRAMS ENVIRONMENTAL LAW CLINIC AT
THE UNIVERSITY OF CHICAGO LAW SCHOOL

November 10, 2017

BY CERTIFIED MAIL—
RETURN RECEIPT REQUESTED

Pacific Ethanol Pekin, Inc.
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Aventine Renewable Energy, Inc.
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C T Corporation System (as Agent)
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RE: Notice of Intent to Sue for Violations of the Clean Water Act

To Whom It May Concern:

I am writing on behalf of the Sierra Club and Prairie Rivers Network, whose members reside and recreate near the Pacific Ethanol, Inc. (formerly known as Aventine Renewable Energy, Inc.) corn milling and bioethanol refinery in Pekin, Illinois. The refinery discharges its wastewater into a stretch of the Illinois River south of Peoria, Illinois. Members of the Sierra Club and Prairie Rivers Network recreate on this stretch of the Illinois River and are adversely affected by pollution from the Pacific Ethanol, Inc. (hereinafter "Pacific Ethanol") refinery. This letter constitutes the Sierra Club and Prairie Rivers Network's notice of intent to sue for violations of the Clean Water Act resulting from the refinery's operation in violation of the law. The violations upon which this notice letter is based are more fully set forth below.

Aventine Renewable Energy, Inc. (hereinafter "Aventine") obtained the most recent National Pollutant Discharge Elimination System (NPDES) permit, No. IL0001953, covering wastewater discharges at the facility from the Illinois Environmental Protection Agency (hereinafter "IEPA") on May 6, 2014. In July 2015, Pacific Ethanol purchased Aventine, which became a wholly-owned subsidiary of Pacific Ethanol. Pacific Ethanol is now operating the refinery under permit No. IL0001953. The permit establishes effluent limits for wastewater

discharges from the refinery; any discharges in excess of these limitations constitute a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Based on publicly available discharge-monitoring reports and documents obtained from the IEPA under the Freedom of Information Act on March 28, 2017 and October 20, 2017, we have reason to believe that Pacific Ethanol and Aventine have repeatedly violated, and will continue to violate, Section 301(a) of the federal Clean Water Act, 33 U.S.C. § 1311(a), and NPDES permit No. IL0001953. The Pacific Ethanol refinery in Pekin has routinely discharged wastewater that significantly exceeds the temperature and flow limits established in permit IL0001953, among other NPDES permit violations. The specific limits for these pollutants, and the refinery's repeated violations, are discussed below.

I. Permit Limits

The IEPA issued the current version of NPDES Permit No. IL0001953 on May 6, 2014, with an effective date of June 1, 2014. The permit expires on May 31, 2019. The predecessor permit, also numbered IL0001953, was issued and became effective on December 4, 2006 with an expiration date of November 30, 2011. It appears that the refinery was operating under the terms of the 2006 permit until the current permit became effective on June 1, 2014. Among other conditions, Permit No. IL0001953 includes the following effluent limits:

Temperature. Both the 2006 and 2014 permits contain a monthly maximum limit of 60°F for December through March, and 90°F for April through November from outfalls 001 and 002.

Flow. The 2014 permit contains a daily average flow (DAF) limit of 34.73 Million Gallons per Day (MGD) and a daily maximum flow (DMF) limit of 45.571 MGD for outfall 001; a DAF limit of 0.87 MGD and a DMF of 1.1232 MGD for outfall B01; a DAF limit of 0.26 MGD and a DMF limit of 0.26 MGD for outfall C01; and a DAF limit of 1.224 MGD and a DMF limit of 1.224 MGD for outfall 002. The 2006 permit contained a DAF limit of 34.73 MGD for outfall 001; a DAF limit of 0.87 MGD for outfall B01; a DAF limit of 0.26 MGD for outfall C01; and a DAF limit of 1.224 MGD for outfall 002.

Total Chlorine Residual. Both the 2014 and 2006 permits contain a daily maximum concentration limit of 0.05mg/L for outfalls 001 and 002.

Ammonia. Both the 2006 and 2014 permits contain a 30-day average concentration limit of 3mg/L for outfall B01 whenever the 30-day average load from outfall B01 exceeds 100 lbs/day, and a daily maximum concentration limit of 6mg/L for outfall B01 whenever the daily maximum load exceeds 200 lbs/day from outfall B01.

II. Violations

The violations referred to above include, but are not limited to, the following:

2017 Violations

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
1/31/2017	Temperature	001	91.5°F	Monthly maximum	60°F
1/31/2017	Temperature	002	69.6°F	Monthly maximum	60°F
2/28/2017	Temperature	001	89.8°F	Monthly maximum	60°F
2/28/2017	Temperature	002	78.8°F	Monthly maximum	60°F
3/31/2017	Temperature	001	86.1°F	Monthly maximum	60 °F
3/31/2017	Temperature	002	74.3°F	Monthly maximum	60°F
4/30/2017	Temperature	001	97.5 °F	Monthly maximum	90°F
5/31/2017	Flow	001	48.534 MGD	DMF	45.571 MGD
5/31/2017	Temperature	001	99.4°F	Monthly maximum	90°F
5/31/2017	Temperature	002	90.1°F	Monthly maximum	90°F
6/30/2017	Temperature	001	109.4°F	Monthly maximum	90°F
6/30/2017	Temperature	002	116°F	Monthly maximum	90°F
7/31/2017	Temperature	001	114.6°F	Monthly maximum	90°F
7/31/2017	Temperature	002	106.4°F	Monthly maximum	90°F

2016 Violations

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
1/31/2016	Temperature	002	74°F	Monthly maximum	60°F
2/29/2016	Flow	B01	0.929 MGD	DAF	0.87 MGD
2/29/2016	Flow	B01	1.393 MGD	DMF	1.1232 MGD

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
2/29/2016	Chlorine Residual	001	0.08 mg/L	Daily maximum	0.05 mg/L
2/29/2016	Temperature	001	91.1°F	Monthly maximum	60°F
2/29/2016	Temperature	002	89°F	Monthly maximum	60°F
3/31/2016	Temperature	001	88.3°F	Monthly maximum	60°F
3/31/2016	Temperature	002	79°F	Monthly maximum	60°F
4/30/2016	Flow	C01	0.431 MGD	DMF	0.26 MGD
4/30/2016	Temperature	001	97°F	Monthly maximum	90°F
5/31/2016	Flow	C01	0.317 MGD	DMF	0.26 MGD
5/31/2016	Temperature	001	102.6°F	Monthly maximum	90°F
5/31/2016	Temperature	002	97°F	Monthly maximum	90°F
6/30/2016	Flow	C01	0.262 MGD	DAF	0.26 MGD
6/30/2016	Flow	C01	0.336 MGD	DMF	0.26 MGD
6/30/2016	Temperature	001	109°F	Monthly maximum	90°F
6/30/2016	Temperature	002	101°F	Monthly maximum	90°F
7/31/2016	Flow	C01	0.38 MGD	DMF	0.26 MGD
7/31/2016	Temperature	001	112°F	Monthly maximum	90°F
7/31/2016	Temperature	002	100°F	Monthly maximum	90°F
8/31/2016	Flow	C01	0.293 MGD	DAF	0.26 MGD
8/31/2016	Flow	C01	0.339 MGD	DMF	0.26 MGD
8/31/2016	Temperature	001	113.6°F	Monthly maximum	90°F
8/31/2016	Temperature	002	101°F	Monthly maximum	90°F
9/30/2016	Flow	C01	0.324 MGD	DAF	0.26 MGD
9/30/2016	Flow	C01	0.38 MGD	DMF	0.26 MGD
9/30/2016	Temperature	001	107°F	Monthly maximum	90°F

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
9/30/2016	Temperature	002	104°F	Monthly maximum	90°F
10/31/2016	Flow	C01	0.267 MGD	DAF	0.26 MGD
10/31/2016	Flow	C01	0.344 MGD	DMF	0.26 MGD
10/31/2016	Temperature	001	98.4°F	Monthly maximum	90°F
11/30/2016	Temperature	001	92.5°F	Monthly maximum	90°F
12/31/2016	Temperature	001	80.9°F	Monthly maximum	60°F
12/31/2016	Temperature	002	68°F	Monthly maximum	60°F

2015 Violations

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
1/31/2015	Temperature*	002	68°F	Monthly maximum	60°F
1/31/2015	Temperature*	001	91.5°F	Monthly maximum	60°F
2/28/2015	Flow	B01	1.17 MGD	DMF	1.1232
2/28/2015	Temperature*	002	67°F	Monthly maximum	60°F
2/28/2015	Temperature*	001	73.1°F	Monthly maximum	60°F
3/31/2015	Flow	C01	0.325	DMF	0.26
3/31/2015	Temperature*	002	82°F	Monthly maximum	60°F
3/31/2015	Temperature*	001	78°F	Monthly maximum	60°F
4/30/2015	Temperature*	001	98°F	Monthly maximum	90°F
4/30/2015	Temperature*	002	94°F	Monthly maximum	90°F
5/31/2015	Temperature*	001	92.3°F	Monthly maximum	90°F

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
5/31/2015	Temperature*	002	96°F	Monthly maximum	90°F
6/30/2015	Temperature	001	91.4°F	Monthly maximum	90°F
6/30/2015	Temperature	002	96°F	Monthly maximum	90°F
7/31/2015	Temperature	002	96°F	Monthly maximum	90°F
8/31/2015	Temperature	001	98°F	Monthly maximum	90°F
8/31/2015	Temperature	002	96°F	Monthly maximum	90°F
9/30/2015	Temperature	001	91.1°F	Monthly maximum	90°F
9/30/2015	Temperature	002	96°F	Monthly maximum	90°F
10/31/2015	Temperature	001	98°F	Monthly maximum	90°F
11/30/2015	Temperature	001	93°F	Monthly maximum	90°F
12/31/2015	Temperature	001	87°F	Monthly maximum	60°F
12/31/2015	Temperature	002	74°F	Monthly maximum	60°F

*Temperature violations reported between 06/01/2014 and 06/01/2015 occurred during a one-year period in which the temperature limits in the permit were "not applicable," as detailed in Special Condition 3(F). The permit explicitly states that the purpose of this period was "to allow the permittee time to conduct the field study described in Special Condition 4, and apply to the Agency for inclusion of a thermal mixing zone." According to all available IEPA records, neither Aventine nor Pacific Ethanol ever conducted the mixing zone field study. Furthermore, temperature violations during the one-year period still violate Special Condition 24 of the permit, which prohibits Pacific Ethanol from violating any applicable water quality standard outlined in the Illinois Administrative Code § 302. The Illinois Administrative Code sets identical temperature limits of 60°F between December and March and 90°F between April and November, among other less specific standards that Pacific Ethanol may also have violated. 35 Ill. Adm. Code 302.211.

2014 Violations

Date	Discharge type	Outfall	Measured value	Type of allowance	Permit allowance
1/31/2014	Temperature	001	75.2°F	Monthly maximum	60°F
6/30/2014	Flow	C01	0.267 MGD	DAF	0.26 MGD
6/30/2014	Flow	C01	0.324 MGD	DMF	0.26 MGD
6/30/2014	Temperature*	001	109.1°F	Monthly maximum	90°F
6/30/2014	Temperature*	002	96°F	Monthly maximum	90°F
7/31/2014	Flow	C01	0.298 MGD	DAF	0.26 MGD
7/31/2014	Flow	C01	0.378 MGD	DMF	0.26 MGD
7/31/2014	Nitrogen ammonia	B01	644 lb/D 87.12 mg/L	Daily maximum	200 lb/D 6 mg/L
7/31/2014	Temperature*	001	108.1°F	Monthly maximum	90°F
7/31/2014	Temperature*	002	99°F	Monthly maximum	90°F
8/31/2014	Flow	C01	0.29 MGD	DMF	0.26 MGD
8/31/2014	Temperature*	001	112°F	Monthly maximum	90°F
8/31/2014	Temperature*	002	97°F	Monthly maximum	90°F
9/30/2014	Temperature*	001	108°F	Monthly maximum	90°F
9/30/2014	Temperature*	002	99°F	Monthly maximum	90°F
10/31/2014	Temperature*	001	101.4°F	Monthly maximum	90°F
10/31/2014	Temperature*	002	91°F	Monthly maximum	90°F
12/31/2014	Temperature*	001	80.6°F	Monthly maximum	60°F
12/31/2014	Temperature*	002	66°F	Monthly maximum	60°F

*Refer above to note following 2015 Violations table regarding Temperature violations.

2013 Violations

Date	Discharge Type	Outfall	Measured value	Type of allowance	Permit allowance
1/31/2013	Temperature	001	75°F	Monthly maximum	60°F
1/31/2013	Temperature	002	70°F	Monthly maximum	60°F
2/28/2013	Temperature	001	83.2°F	Monthly maximum	60°F
3/31/2013	Temperature	001	87°F	Monthly maximum	60°F
4/30/2013	Temperature	001	97.2°F	Monthly maximum	90°F
5/31/2013	Temperature	001	106.3°F	Monthly maximum	90°F
6/30/2013	Temperature	001	106°F	Monthly maximum	90°F
6/30/2013	Temperature	002	96°F	Monthly maximum	90°F
7/31/2013	Flow	001	38.307 MGD	DAF	34.73 MGD
7/31/2013	Temperature	001	114.1°F	Monthly maximum	90°F
7/31/2013	Temperature	002	103°F	Monthly maximum	90°F
8/31/2013	Flow	001	35.371 MGD	DAF	34.73 MGD
8/31/2013	Temperature	001	117.3°F	Monthly maximum	90°F
8/31/2013	Temperature	002	102°F	Monthly maximum	90°F
9/30/2013	Temperature	001	117°F	Monthly maximum	90°F
9/30/2013	Temperature	002	98°F	Monthly maximum	90°F
10/31/2013	Temperature	001	108°F	Monthly maximum	90°F
10/31/2013	Temperature	002	91°F	Monthly maximum	90°F
11/30/2013	Temperature	001	91°F	Monthly maximum	90°F

*The DMR data does not specify whether the Flow measurements were taken before or after the cooling water separation. Therefore, there may be additional violations if the measurements

were taken after the cooling water separation, where the permit limits were lower. For example, the DMR data reported a DAF of 33.712 MGD for Outfall 001 for the period ending 5/31/2013, which is above the 23.08 MGD post-cooling water separation limit, but below the 34.73 MGD pre-cooling water separation limit.

2012 Violations

Date	Discharge Type	Outfall	Measured value	Type of allowance	Permit allowance
12/31/2012	Temperature	001	92.4°F	Monthly maximum	60°F
12/31/2012	Temperature	002	73°F	Monthly maximum	60°F

*Refer above to note following 2013 Violations table.

There have been numerous exceedances of NPDES permit No. IL0001953 within the last five years, as demonstrated by monitoring data reported by Pacific Ethanol and Aventine in its monthly Discharge Monitoring Reports. Each of the exceedances represents a violation of the federal Clean Water Act, 33 U.S.C. § 1311(a), and NPDES Permit No. IL0001953.

Aventine and Pacific Ethanol's failure to complete the mixing zone field study required by Special Condition 15 of the 2006 version of its permit and Special Condition 4 of the 2014 version of its permit also constitutes a violation of the federal Clean Water Act, 33 U.S.C. § 1311(a), and NPDES Permit No. IL0001953.

Additionally, there appear to have been reporting violations at the Pacific Ethanol refinery within the last five years. The Illinois Environmental Protection Agency's DMR search (http://dataservices.epa.illinois.gov/dmrdata/dmrsearch.aspx) appears to be missing DMR reports for 2013, 2014, 2015, and 2016. For example, the DMR search page returns no data for the months of February through May of 2014. It is unclear whether those missing values are due to a failure to report by the facility, errors in the IEPA's DMR search page, or data not being collected due to high receiving stream conditions.

This notice letter is based on publicly available information and documents obtained from the IEPA under the Freedom of Information Act. Additional information, including information in the refinery's possession, such as natural water temperatures in the receiving stream, may reveal additional violations. This letter covers all such violations occurring within five years immediately preceding the date of this notice letter.

This letter provides notice of the Sierra Club and Prairie Rivers Network's intent to file a federal enforcement action under the authority of the Clean Water Act's citizen-suit provision,

33 U.S.C. § 1365(a), to secure appropriate relief for these violations. The Sierra Club and Prairie Rivers Network seek to improve water quality in the Illinois River by securing long-term compliance with applicable law.

Should you or your attorney wish to discuss this matter, please feel free to contact us at the addresses and phone numbers listed below.

Sincerely,

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